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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC 00 046 52388

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 22 2002**

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a manufacturer of soil enzyme based stabilization products with 4 employees and a gross annual income of \$1,200,000. It seeks to employ the beneficiary as an organic chemist for a three-year period. The director determined that the proffered position qualified as a specialty occupation but denied the petition finding that the petitioner had not established that the beneficiary had a bachelor's degree or its equivalent in the required academic specialty.

On appeal, counsel submits a brief.

The regulation at 8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

In addition, the regulation at 8 C.F.R. 214.2(h)(4)(i)(A)(1) provides that an H-1B classification may be granted to an alien who:

Will perform services in a specialty occupation which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent as a minimum for entry into the occupation in the United States, and who is qualified to perform services in the specialty occupation because he or she has attained a baccalaureate or higher degree or its equivalent in the specialty occupation.

On appeal, counsel argues the petition should be approved because the beneficiary has a post-graduate degree in the sciences and has 6 years of progressively responsible experience in the identical position for the employer abroad. Counsel argues that the beneficiary has taken a number of college level courses in the field of chemistry.

Counsel's argument on appeal is not convincing. The record does not establish that the beneficiary has a bachelor's degree or its equivalent in an academic field related to the specific specialty occupation.

The Department of Labor's Occupational Outlook Handbook 2000-2001, indicates that a bachelor's degree in chemistry or a related discipline is usually the minimum educational requirement for an entry-level chemist's job.

The petition is supported by an evaluation performed by a professional evaluation service that indicates, based on his academic study, the beneficiary had the equivalent of a Doctor of Dental Surgery degree awarded by an accredited college or university in the United States. The petition is also supported by a letter from the beneficiary's foreign employer indicating that he was employed from 1994 as a technical assistant.

Since the evaluation does not indicate that the beneficiary has the equivalent of a bachelor's or higher degree in chemistry or that the beneficiary's degree is related to a degree in chemistry, the Service is required to examine the alien's work experience and training to determine if he has the equivalent of a bachelor's or higher degree in the field.

The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) allows the Service to determine whether an alien's education and experience are the equivalent to a bachelor's degree. The regulation provides that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. The regulation also provides that it must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty. Finally, in order to establish the alien's experience and training are equivalent to academic training, the regulation provides that one of the following types of documentation must be submitted:

1. Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
2. Membership in a recognized foreign or United States association or society in the specialty occupation;
3. Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

4. Licensure or registration to practice the specialty occupation in a foreign country; or
5. Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

While counsel has submitted an employment letter indicating that the beneficiary was employed abroad by a firm related to the petitioning entity, counsel has not submitted any of the five types of documentation enumerated above. In addition, the employment letter merely indicates that the beneficiary was employed as a technical assistant, not as a chemist. As a result, it has not been shown that the beneficiary has the equivalent of a bachelor's or higher degree in chemistry. Therefore, the director's decision will not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.